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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1688

JEFF FORT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MARSHALL PATNER
109 N. Dearborn Street
Chicago, Illinois 60602
(312) 641-5570

WILLIAM W. BRACKETT
122 S. Michigan Avenue
Chicago, Illinois 60603
(312) 341-0515

Attorneys for Petitioner

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3988

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above case on December 14, 1970. A petition for rehearing was denied on February 1, 1971.

OPINION BELOW.

The judgment of the Court of Appeals is reported at ..... F. 2d ..... (D.C. Cir. 1970), and is set out in full in Appendix A.

THE RECORD.

A certified copy of the record below will be filed on request of this Court.

JURISDICTION.

This petition is presented for review of the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on December 14, 1970. A petition for rehearing was denied on February 1, 1971. Jurisdiction is invoked under 28 U.S.C. §1254.

QUESTIONS PRESENTED.

1. Whether the criminal contempt of Congress statute, 2 U.S.C. §192, intended to aid the Congress to obtain information for its legislative pursuits, violates the limitations of the "necessary and proper" clause, Article I, Section 8, Clause 18, and is void and unenforceable when under the statute the Congress does not obtain in-

formation from a witness whose challenge to the proceeding is overruled by a court; and whether punishment of the witness under the statute without any opportunity to testify after a court rejects his objections voids the statute for denial of due process of law required under the Fifth Amendment.

2. Whether prosecution under the statute is barred where the reason for refusal by a witness to testify is the denial of due process of law by the inquiring committee when it refused any opportunity to a maligned witness to confront, cross examine, and present evidence after the inquiry had turned into a *de facto* legislative trial and the witness has no alternate forum for relief.

3. Whether a witness charged with violation of the statute is deprived of trial by jury and of a fair trial where he is prevented from contesting before the jury the question of notice of the purpose, scope, and authority of the proceedings, a necessary element of the government's case.

4. Whether it is improper to sentence a witness for violation of the criminal contempt of Congress statute under the Youth Correction and Young Adult Acts, where the violation charged is a non-violent misdemeanor, is unlikely to reoccur, and where the conviction is the result of a refusal to testify before a Congressional inquiry committee based on constitutional grounds.

STATUTES, CONGRESSIONAL RULES OF PROCEDURE, AND CONSTITUTIONAL PROVISIONS INVOLVED.

The following are set out in Appendix B to this petition:

Statutes:

2 U.S.C. §192.

Resolutions:

Senate Resolutions 53, 150, and 216, 90th Congress, 1st Session (1968).

Rules:

Rules of Procedure for the Senate Permanent Subcommittee on Investigations.

Constitutional Provisions:

Article I, §8, cl. 18.
Fifth Amendment.
Sixth Amendment.

STATEMENT OF THE CASE.

In the summer of 1968 the Senate Permanent Subcommittee on Government Operations conducted a Congressional inquiry. Ostensibly the purpose of the inquiry was to investigate a grant by the Office of Economic Opportunity to The Woodlawn Organization in Chicago. Petitioner Fort (hereinafter sometimes referred to as "defendant") was a participant in the program under the grant and was called to testify.

Prior to his appearance petitioner had been repeatedly maligned by and before the Subcommittee. Before he appeared he served a written demand on the Subcommittee Chairman for permission to confront and cross examine his accusers and to present evidence on his own behalf. When he appeared before the Subcommittee on July 9, 1968, the Chairman denied or deferred ruling on petitioner's demands. Petitioner was told that the subcommittee rules did not provide for the relief he requested. Petitioner explained that with the safeguards he would testify, but without them he could not. When the Subcommittee persisted in its rulings, petitioner, after fruitlessly requesting the Subcommittee to strike the adverse testimony and remarks, politely withdrew. In his absence the Subcommittee put a series of questions to an empty chair.

Petitioner was indicted in the District of Columbia on two counts of violating the criminal contempt of Congress statute, 2 U.S.C. §192 (1964). Prior to trial petitioner moved to dismiss the indictment. He contended, first, that the statute was unconstitutional as an excessive exercise of legislative power in violation of the lim-

itation of the "necessary and proper" clause, Article I, Section 8, Clause 18, and second, as in violation of the due process clause of the Fifth Amendment. Petitioner showed that the statute punished a refusal to testify as an affront, a kind of criminal contempt, instead of as a civil contempt with a flexible punishment fitting as a means to obtain proper information.

Relying on the Fifth and Sixth Amendments to the Constitution, petitioner also moved to dismiss on the ground that the Subcommittee's refusal to grant his demands for procedural protections at the hearing was a bar to the prosecution.

Finally, petitioner moved to dismiss for lack of adequate notice of the Congressional proceedings, for lack of authority, and for abuse of power of the Subcommittee.

All of these motions were denied.

The trial court, before evidence was presented to the jury, ruled that both notice and authority were matters of law which the court would decide. The Court then refused to permit petitioner to put evidence of lack of notice before the jury.

The jury found petitioner guilty on both counts. Over objection the court sentenced petitioner under the Youth Correction Act, 18 U.S.C. §5010(e), as adopted by the Young Adult Act, 18 U.S.C. §4209, permitting imprisonment four times longer than the statutory maximum penalty for this "crime" of refusing to answer as a means of testing constitutional objections. The Court of Appeals for the District of Columbia affirmed and denied rehearing.

Petitioner now seeks review by this Court.

ARGUMENT.

I.

THE CONGRESSIONAL CONTEMPT STATUTE FAILS TO ACCOMPLISH ANY VALID LEGISLATIVE PURPOSE, PROSCRIBES CONSTITUTIONALLY PROTECTED CONDUCT, AND IS VOID AND UNENFORCEABLE.

Defendant was indicted under 2 U.S.C. §192. Prior to trial he moved to dismiss the indictment on the ground that the statute was invalid. The statute reads:

> "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000, nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

While acknowledging that the Congress has the right to investigate for legislative purposes and that it has limited power to compel testimony to that end, defendant contends that the above statute is unconstitutional because it does not accomplish any valid legislative purpose as it is designed to punish a witness for refusal to testify, not as a means to obtain information. It is, therefore, defendant's position that the statute is not

"necessary and proper" legislation, and therefore exceeds the authority of Congress under Article I, Section 8, of the Constitution or, alternatively, that it violates the due process clause of the Fifth Amendment.

Congress, it has always been held, has an "inherent power" to summon and question a witness and, if the witness refuses to provide information (and if the inquiry was proved to be proper), to punish him until he would provide the necessary information. *Anderson* v. *Dunn,* 18 U.S. 204 (6 Wheat) (1821); *Watkins* v. *United States,* 354 U.S. 178, 207-208, n. 45 (1956). But 2 U.S.C. §192 punishes for the sake of punishment, as it continues to punish persons even after they decide to provide the requested information. This is invalid.

Before 2 U.S.C. §192 was passed, the Congress, in applying the inherent Congressional contempt power, summoned the recalcitrant witness before the bench of the respective House, and if he was adjudged to be in contempt (after Congress decided as to the propriety of the proceeding and the pertinency of the inquiry), he was placed in custody of the Sergeant-at-Arms until the end of the Congressional term, or until he decided to provide the necessary information. Under this procedure, the witness was able to test by writ of habeas corpus the correctness of the Congressional judgment before a court. If the witness was incorrect and failed in court, he was able to cure the contempt by later answering—that is, by purging the contempt—and thus terminate his punishment. Therefore, the coercive power of the Congress was devoted to securing information, which is the appropriate legislative purpose of Congressional inquiry as upheld in *Anderson* v. *Dunn,* 18 U.S. (6 Wheat) 204 (1821).

In 1857, the Congress ceased relying on its inherent powers and adopted a statute, which now appears as 2 U.S.C. §192, to provide for the handling of Congressional contempt cases by the courts. The statute, it is said, was adopted in order to transfer the contempt problems from the increasingly busy Congress to the Courts. It is apparent from the history of the inherent Congressional power, from the events that led up to the adoption of the statute setting up the judicial procedure, and from the title of the Act itself,(*) that the purpose was to use coercive power as in a civil contempt so as to obtain information. See generally *Watkins* v. *United States,* 354 U.S. 178, 207-208 (1956). The statute was not intended to be a means for punishment as in criminal contempt, for an affront or otherwise, not leading to production of information. Rather the power under Section 192 was to be limited:

> "To cases where power is necessarily implied from the constitutional functions and duties, to the proper performance of which it is essential." *Kilbourn* v. *Thompson,* 103 U.S. 168, 199 (1880).

That is, the power was to be limited to "necessary and proper" means of obtaining information for some legitimate Congressional end. This Court noted in *In re Chapman,* 166 U.S. 661, 671 (1897), that:

> "[The purpose of Section 192 is only] to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective [Houses of Congress] to discharge their legitimate function."

(*) "An Act More Effectually To Enforce The Attendance of Witnesses On The Summons Of Either House of Congress, And To Compel Them To Discover Testimony." 11 Stat. 1155, c. 19, January 24, 1857.

Thus, the only vaild function of 2 U.S.C. §192 is to obtain information, not to treat a reasonable refusal as a crime and to punish for the sake of punishment alone.(*)

In Section 192, however, the Congress mixing notions of civil and criminal contempt made no provision for a witness to answer and so cut short a contempt sentence. See *Gompers* v. *Bucks Stone & Range Co.*, 221 U.S. 418, 441-443 (1911). A witness who refuses to testify before a Congressional committee does so at his peril, and he cannot later purge his contempt and testify. See *Sinclair* v. *United States,* 279 U.S. 263 (1929) In that case the Court stated "the gist of the offense is refusal to answer pertinent questions." 279 U.S. at 299. If the validity of the Congressional inquiry is sustained, the witness is punished under Section 192; the Congress, however, does not get its information. This is punishment for its own sake, unrelated to any valid legislative purpose, and the power is neither necessary nor proper.

The fact that the statute does not accomplish its purpose has been judicially recognized in the District of Columbia, where most Congressional contempt proceedings occur. The trial courts there have informally altered the contempt statute by issuing orders whereby the convicted witnesses will avoid punishment (but retain his conviction record) if he will produce the requested information in the event his appeal is denied. Thus, in

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(*) Similarly, *In Re Grand Jury Investigation of Sam Giancana,* 352 F. 2d 921, 924 (7th Cir. 1965), cert. den. 382 U.S. 959 (1965), states that the purpose of imprisonment of a grand jury witness who refused to answer questions put to him after he was granted immunity under the Communications Act was to coerce him to answer questions and not to punish him for failure to do so.

United States v. *Goldfine,* 174 F. Supp. 255 (D.C.D.C. 1959), the trial court ordered:

> ". . . sentence suspended so that defendant may have opportunity to comply with the committee directive or appeal; stipulation that if convicted, defendant would comply."

See also *United States* v. *Tobin,* 195 F. Supp. 588 (D.C. D.C. 1961), rev'd. on other grounds, 306 F. 2d 207 (D.C. Cir. 1962). In discussing these cases, a commentator observed:

> "Apparently, the [reviewing] court's decision resulted, at least in part, from its dissatisfaction with the criminal contempt proceeding under Section 192; it specifically invited Congress to provide an alternative method for litigating issues arising out of congressional investigations."

Note, *Alternatives to Criminal Contempt Sought in Congressional Investigations,* 31 Geo. W. L. Rev. 842, 843.

Similarly, this Court in *Penfield Oil* v. *Security and Exchange Comm.,* 330 U.S. 585 (1947), demonstrated that criminal punishment is not permissible when the intent is to secure information. It held that a fine was improper and inappropriate punishment where the purpose of punishment of a recalcitrant witness was to coerce him to produce information requested and held to be relevant. The lower court was therefore ordered to commit the witness as a means to coerce testimony. The fine, which was purely punitive or exemplary in nature, was held to be improper where the purpose of the investigation was to obtain information.

It is only the Congress that has seen fit to adopt the procedure complained of here. See *Interstate Commerce*

Commission v. *Illinois Central Railroad,* 215 U.S. 452 (1909); Davis, *The Administrative Power of Investigation,* 56 Yale L. J. 1111, 1142 (1947); Davis, *Administrative Law,* § 3.11 n. 5 (1958). The practice before administrative agencies is to require a final order of a court followed by noncompliance or disobedience before a witness can be punished for contempt. See 49 U.S.C. §12 (1964) (example of a typical procedure, before the Interstate Commerce Commission).

It is clear that if such judicial action was necessary before the Congress could compel testimony and before it could vote a contempt citation, a witness would be able to have his objection to a question properly tested before a court. If the court upheld the questioner, then the witness could decide to testify, in effect avoiding or purging any contempt, and so satisfy Congress' interest in obtaining information. Section 192 fails to do this and, as not reasonably related to any legislative purpose, it is therefore invalid as in violation of the necessary and proper clause of Article I, Section 8.

Alternatively, Section 192 as interpreted by this Court in *Sinclair* v. *United States,* 279 U.S. 263 (1929), works to coerce testimony that the Congress may not be entitled to have under conditions that violate due process of law. This occurs when a witness, in fear that his good faith objections may later be overruled, testifies. In doing so, the witness may be failing to raise substantial constitutional questions. To the extent that *Sinclair* is responsible for this dilemma, it should after forty years be re-examined, given the substantial growth of the case law making due process rights available at Congressional hearings. The Bill of Rights applies to Congressional investiga-

tions, *Watkins* v. *United States,* 354 U.S. 178, 188 (1956), but under Section 192, as interpreted, constitutionally protected rights are proscribed. The statute is intended to cover the witness who refuses to honor a subpoena to appear, without reason. But the actual operation of the statute also reaches those who raise responsible legal objections to testifying, often based on important constitutional questions, as did defendant here. Judge Edgerton's dissent in *United States* v. *Barsky,* 167 F. 2d 241 (D.C. Cir. 1948), cert. den. 333 U.S. 838 (1947), is a truly elegant statement of the problem raised, and the Court is respectfully referred to it.

Fully adequate alternative methods by which Congress may secure needed information, without the criminal contempt statute, are available. The Court should grant the writ to consider the validity of Section 192.

II.

WHERE THE CONGRESS REFUSES TO GRANT CONSTITUTIONAL RIGHTS TO A WITNESS HIS REFUSAL TO TESTIFY IS JUSTIFIED AND PROSECUTION FOR CONTEMPT OF CONGRESS IS BARRED.

Defendant believes this is a case of first impressions, as he knows of no other case in which a contempt conviction for refusal to testify has been defended on the grounds that a Committee of Congress refused to allow him as a witness to confront and cross examine his accusers or to produce evidence on his own behalf, after he had been repeatedly defamed. And in this case, defendant made it clear that he would testify if granted these rights.

The rights defendant requested are basic and fundamental. They are necessary to any defense of reputation

and they have been accorded to other witnesses in proceedings before the very Subcommittee which denied them to defendant. Further, precedent supports the necessity of according defendants such rights. Defendant refused to testify only after he had been seriously harmed, had repeatedly requested such rights and had been refused some and had had his requests for others "deferred." Only then, lacking any other means to defend himself, did he withhold his testimony.

Defendant was not, and is not, attacking the right of Congress to collect information. Compare *Shelton* v. *United States,* 404 F. 2d 1292 (D.C. Cir. 1969). Nor did, defendant attempt to force Congress, by judicial intervention, to adopt certain procedures or to refrain from any action unless such procedures were adopted. Compare *Hannah* v. *Larche,* 363 U.S. 420 (1959). Thus, no separation of powers problem is raised here.

Instead, defendant relies upon the acknowledged principle that a conviction for refusal to testify cannot stand when the defendant's rights were violated, a principle clearly stated by this Court in *McGrain* v. *Daugherty,* 273 U.S. 135, 175-176, (1926):

> "We must assume, for present purposes, that neither house will be disposed to exert the power beyond its proper bounds, or without due regard to the rights of witnesses. But if, contrary to this assumption, controlling limitations or restrictions are disregarded, the decisions in *Kilbourn* v. *Thompson* [103 U.S. 168] and *Marshall* v. *Gordon* [243 U.S. 521] point to admissible measures of relief. And it is a necessary deduction from the decisions in *Kilbourn* v. *Thompson* and *Re Chapman* [166 U.S. 661] that a witness rightfully may refuse to answer where the

> bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry."

Defendant's position here is merely that prosecution of a witness for contempt of Congress for refusal to answer is barred when the refusal occurs after the witness has been harmed by prior testimony before a Congressional committee and he has not been granted the right to full assistance of counsel, to confront and cross examine his accusers, and to call witnesses when he testifies.

The Congress may see fit to proceed in its investigations without granting those rights. But if it does so, it cannot obtain a criminal conviction for the "willful" refusal to testify of a witness so situated. See *Slagle* v. *Ohio,* 366 U.S. 259 (1961).

This Court will not allow individuals to be so treated and a conviction, even for a willful refusal to answer, when the defendant's rights were violated cannot be sustained. See *Watkins* v. *United States,* 354 U.S. 178 (1956); *Yellin* v. *United States,* 374 U.S. 109, 118-122 (1962) (holding the investigative committee to strict compliance with its rules when questions of a witness' reputation is at issue). When Congress violates a witness' rights by its own rules or a statute, the courts will perhaps not order the Congress to change its procedures. But conversely, a court should not lend its offices by sustaining a conviction for criminal contempt when Congress thus denies witnesses due process of law. See *Gojack* v. *United States,* 384 U.S. 702 (1962).

The prerequisite for a witness to be entitled to the due process rights discussed more fully below is that he has been harmed, as defendant was by the Subcommittee proceedings. The record is clear that testimony before

the Subcommittee, both before and after defendant's appearance, specifically identified him by name, repeatedly accused him of crimes and otherwise defamed him and made serious adverse claims against his reputation. This was also done on the record by allegations of anonymous persons in affidavits and other documents, and in comments of Subcommittee members and their counsel.

The defendant here requested only the elementary rights of confrontation, cross examination, the right to call witnesses, and effective assistance of counsel after he had become the accused in a legislative trial. When the Subcommittee allowed defendant to become a special target and allowed repeated defamation of him in open session, before the press and on television, to the injury of his valuable right of reputation, he was entitled to constitutional protection. See the dissent of Judge Edgerton in *Barsky* v. *United States,* 169 F. 2d 241, 252 (D.C. Cir. 1948), cited with approval in *Watkins* v. *United States,* 354 U.S. 178, 202 n.40 (1956).

The right to confrontation and cross examination and the right to call witnesses will only be necessary in a limited number of cases, and ground rules can be established so as not to impede the valid work of the Subcommittee. This has been done in the past, such as in the Army-McCarthy hearings, and other similar occasions. See generally American Bar Association, *Report of Special Committee on Individual Rights As Affected By National Security* (1954) (collecting a large number of instances in which such requests, in Congressional investigations, have been granted). The price of any extra time spent thereby was well spent. Under the basic truth-seeking devices, the McCarthy charges withered, the witnesses were able to defend their reputations, and

the public got the truth. In the absence of adoption of similar rules by the respective investigating committees, the courts should bar prosecution for Congressional contempt of any witness who when denied these basic constitutional rights, refuses to participate.

Defendant did not set out to refuse to testify or lightly undertake to withhold his testimony. Instead, he sought only an opportunity to test and refute charges as is clear from his conduct throughout. Before defendant appeared before the Committee, his counsel served a written request that he be allowed his constitutional rights. When counsel had reiterated the request orally to the Committee and it had been denied, Senators McClellan and Mundt astonishingly urged defendant to testify without the relief requested. His counsel then stated:

> "Senator Mundt and Mr. Chairman, as a great deal of the testimony, evidence, documents that have come in are based on hearsay, double or triple hearsay, it is our position that it is inadequate that Mr. Fort could defend himself from the charges that have been made unless he can confront and cross examine those witnesses."

Counsel, after his request for cross examination was denied by the chairman and his request to call other witnesses "deferred," then moved to strike from the record the testimony which had defamed and accused him. This request was also denied, thus leaving the injurious material in the record untested by cross examination and unrebutted by independent testimony.

Defendant at this point was in a cruel dilemma. He had in good faith sought from the Subcommittee an opportunity to rebut the slanders against him made by

prior witnesses and to clear the record of vicious imputations. This opportunity, the course of American history teaches, can exist only when a witness is accorded basic due process protections, which he sought. When his requests were refused, he had no real choice but to refuse to participate further in the hearings. A somewhat analogous situation arose in *Yellin* v. *United States,* 374 U.S. 109 (1963). When a Congressional subcommittee failed to consider Yellin's request that he be examined in executive session, he refused to participate in the hearings. In reversing his conviction for contempt of Congress, this Court showed a keen awareness of the practical quandry in which a witness can find himself:

> "To answer the questions put to [the witness] publicly and then seek redress is no answer. For one thing, his testimony will cause the injury he seeks to avoid; under pain of perjury, he cannot by artful dissimulation evade revealing the information he wishes to remain confidential. For another, he has no opportunity to recover in damages. Even the Fifth Amendment is not sufficient protection, since petitioner could say many things which would discredit him without subjecting himself to the risk of criminal prosecution. The only avenue open is that which petitioner actually took. He refused to testify." (Citations deleted)

374 U.S. at 122. In the present case after all attempts to achieve fair treatment had failed, defendant and his counsel respectfully withdrew from the hearing room. Thus, defendant here also "took the only avenue open." A criminal conviction for so acting cannot be sustained.

Although there are no direct cases on the question of the right of a witness harmed in his reputation to refuse to testify if denied the right to confront and cross ex-

amine accusers and to present evidence before a Congressional Committee, the right to refuse to testify upon the denial of similar rights is clearly established. It is clear that witnesses before a Congressional Committee do not give up their Constitutional rights. As this Court observed in *Watkins* v. *United States,* 354 U.S. 178, 188 (1956), the duty to appear and testify "assumes the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice." Confrontation and cross examination are rights that have been made applicable to other non-criminal, non-judicial proceedings. See, e.g., *Wilner* v. *Comm. on Character and Fitness,* 373 U.S. 96 (1963); *Murphy* v. *Waterfront Commission,* 378 U.S. 52 (1964); *In re Oliver,* 333 U.S. 257, 273 (1948); *Greene* v. *McElroy,* 360 U.S. 474 (1959). And fair procedure includes the right to call witnesses and to offer rebuttal evidence. *Carter* v. *Kubler,* 320 U.S. 243 (1943); *Barsky* v. *United States,* 167 F. 2d 255, 260-62 (D.C. Cir. 1948) (Edgerton, J., dissenting), cert. den., 333 U.S. 838 (1947).

A witness is entitled to fair procedure when before a Congressional Committee in order to protect his reputation. A witness denied such constitutionally protected rights is entitled to refuse to testify. The defendant in this case was denied these rights and his conviction for contempt of Congress is barred.

III.

DEFENDANT WAS DEPRIVED OF A FAIR TRIAL WHEN THE QUESTION OF NOTICE WAS DECIDED BY THE COURT AS A MATTER OF LAW.

In the preceding sections of this brief, defendant has shown that the conviction below must be reversed on

multiple grounds which do not require or justify remand to the trial court. In this Section, defendant will show, additionally, that he was deprived of a fair trial and is thus entitled to a new trial. Defendant stresses, however, that the issues raised in the preceding sections are broad issues of public importance upon which this Court should rule.

Proceedings under 2 U.S.C. §192 are criminal in nature, and as such, exacting standards of notice of the subject matter under inquiry in the proceedings—that is, a showing of the pertinency of the inquiry—must be met, so that the witness may know whether or not he is compelled to answer questions. This is the basis of both the requirement of "notice" and the "pertinency" requirement in the statute, which must be met if that requirement is to be meaningful. *Watkins* v. *United States,* 354 U.S. 178, 203-209 (1956). As an element of the offense, whether or not defendant had adequate notice must be proven by the government beyond reasonable doubt and ultimately is a question for the jury to determine. The trial court, in treating the matter as a question of law which it reserved to itself, deprived defendant of a full and fair trial by jury, and the conviction must be reversed.

Defendant was prohibited from showing that the only "notice" which he did receive was not sufficient to be lawful notice, because it was erroneous and misleading. There are only two possible documents which could have conveyed "notice" to defendant. They are Senate Authorizing Resolution 216 and the opening statement of the Chairman of the Subcommittee (delivered June 20, 1968), purporting to describe the subject matter of the specific inquiry. Defendant did not have a copy of the

Senate Resolution when he appeared before the Committee on July 9, 1968, and received a copy of the Chairman's opening statement given previously only by purchasing a court reporter's copy of the transcript containing that statement. The prosecution and defendant stipulated that such copy was the only one available prior to defendant's appearance before the Committee and that it was in error, referring to Senate Resolution 212 in the caption and in the body, when in fact the actual "authorizing" resolution was No. 216. The only copy available to defendant of the opening statement and the only "notice" he had thus were erroneous and misleading.

At trial defendant sought to introduce the opening statement of the Subcommittee as incorrectly transcribed in the daily copy he had purchased to show that he did not have adequate notice. The trial court refused to allow the jury to consider the matter, holding that whether the transcript referred to Resolution 212 or 216 was not significant. This was prejudicial error, since under *Watkins* v. *United States,* 354 U.S. 178 (1956), inadequate notice bars a conviction. See also *Gojack* v. *United States,* 384 U.S. 702 (1962).

IV.

THE TRIAL COURT ERRED IN IMPOSING AN INDETERMINATE SENTENCE UNDER PROVISIONS OF THE YOUTH CORRECTION ACT FOR CONTEMPT OF CONGRESS, A MISDEMEANOR WITH A MAXIMUM SENTENCE OF ONE YEAR'S IMPRISONMENT.

Over objection, the trial court found that the provisions of the Youth Correction Act, 18 U.S.C. §5005, apply to this case and sentenced defendant to "diagnosis" under 18 U.S.C. §5010(e), thereby creating the possibility that defendant might be sentenced for an indeterminate period of

up to 4 years, plus supervision for an additional two years.(*) Defendant contends that it was error to apply this statute to a misdemeanor conviction for contempt of Congress under 2 U.S.C. §192, a crime with a maximum sentence of one year.

The Act is not to be automatically applied because a defendant is within the age limits. In the great run of the cases reported where the Youth Correction Act, or its extension, the Young Adult Act, 18 U.S.C. §4209 (1964), has been imposed, the rationale for its use has been to prevent repetition of a particular crime charged. Note legislative history to Young Adult Act, P. L. No. 85-752, 1958 U.S. Code Congr. and Admn. News 3891 (application to "special cases" requiring preventative rehabilitation).

The Youth Correction Act is intended to apply to a situation where the defendant, by the nature of the subject conviction, requires rehabilitation. See *Leach* v. *United States,* 320 F. 2d 670 (D.C. Cir. 1963); *Tatum* v. *United States,* 310 F. 2d 854 (D.C. Cir. 1962). There is no likelihood of repetition of the crime of contempt of Congress charged here. And in any case, no program of rehabilitation would affect defendant as to whether or not he would comply with a Senate Subcommittee request to testify which he challenged on constitutional grounds. And because of the term of imprisonment possible under an indeterminate sentence, in those cases where the Act was applied on a misdemeanor charge, it appears it was because of some violence in the crime charged, or a repetitious pattern of conduct of that charge.

(*) The Court below felt that the issue was ripe for decision, despite the fact that as yet defendant has not been sentenced under the Act. It held that as a practical matter it would decide the ultimate question for reasons of judicial economy. App. A. at 32a-33a.

Further, the indeterminate sentence provisions were never intended to apply to contempt of Congress, which is a criminal contempt. See *Warring* v. *Huff*, 122 F. 2d 641 (D.C. Cir. 1941), cert. den., 314 U.S. 678 (1942), where the court relied on the fact that nothing in the legislative history of the Act, 24-201, D.C. Code, showed any intention to apply the statute to criminal contempt proceedings. The Youth Correction Act does not apply here.(*)

Imposition of the Youth Correction Act is discretionary, but exercise of such discretion is reviewable. *Briscoe* v. *United States*, 391 F. 2d 984, 986 (D.C. Cir. 1968), *Leach* v. *United States*, 320 F. 2d 670 (D.C. Cir. 1963). The Youth Correction Act is to be construed so as to protect the rights of the defendant. *United States* v. *Reef*, 268 F. Supp. 1015, 1017 (D.C. Colo. 1967). There was no violence present in the crime charged and no real chance that it would be repeated. And even if it were not the nature of the crime charged which must trigger the application of the Act, defendant does not have a record which would warrant imposition of the Act. His record is singularly absent of convictions of any serious charges, and shows an extraordinary number of arrests which failed to sustain a conviction once under the scrutiny of a court.

Defendant is not subject to the indeterminate provisions of the Youth Correction Act, and if defendant's conviction is not reversed on the grounds raised above, this cause should be remanded for sentencing under the provisions of 2 U.S.C. §192.

(*) The trial court gave no indication in advance of the sentence hearing that it was considering imposing the Act, and at the hearing the defendant was refused any opportunity to confront, cross-examine, or to call witnesses of his own as to the issue of his liberty or confinement.

REASONS FOR GRANTING THE WRIT.

As set out in the Statement, *supra,* this case as a matter of first impression raises a constitutional issue of the greatest importance: whether a witness can be punished for contempt of Congress for refusing to participate in a legislative proceeding when denied all the constitutional protections needed to protect and vindicate his already maligned reputation. Another question of equal importance presented by this case goes to the very heart of the scope and limitations on criminal contempt of Congress, as defendant suggests that for Congress to punish criminally a refusal to testify rather than to employ the tools of civil contempt is beyond what is "necessary and proper". A third question is whether the *Sinclair* doctrine that a witness refuses to testify at his peril should be reconsidered in light of many substantive rulings in the intervening forty years which have established that the Bill of Rights is available to those testifying before Congressional Committees.

Further, the Court below has voided petitioner's right to a full trial by jury in reserving to itself the factual question of adequate notice. Finally, this Court has never considered what limitations are needed on the trial court's powers under the Youth Correction Act, when, as here a non-violent, highly technical misdemeanor with a maximum sentence of only one year may be punished by an indefinite term of imprisonment lasting up to 4 years.

CONCLUSION.

The Court should grant the Writ and reverse the conviction below.

Respectfully submitted,

MARSHALL PATNER
109 N. Dearborn Street
Chicago, Illinois 60602
(312) 641-5570

WILLIAM W. BRACKETT
122 S. Michigan Avenue
Chicago, Illinois 60603
(312) 341-0515

Attorneys for Petitioner

APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,746

UNITED STATES OF AMERICA

v.

JEFF FORT, APPELLANT

Appeal from the United States District Court for the District of Columbia

Judgment entered this date ←

Decided December 14, 1970

Messrs. Marshall Patner and *William W. Brackett* for appellant.

Mr. John A. Terry, Assistant United States Attorney, with whom *Messrs. Thomas A. Flannery,* United States Attorney, was on the brief, for appellee. *Messrs. David G. Bress,* United States Attorney at the time the record was filed, and *John D. Aldock,* Assistant United States Attorney, also entered appearances for appellee.

Before TAMM, ROBINSON and MACKINNON, *Circuit Judges.*

MACKINNON, *Circuit Judge:* Appellant was convicted on two counts of being in contempt of Congress on July

9, 1968 in violation of 2 U.S.C. § 192.[1] He is here appealing this conviction.

The Senate proceedings out of which this conviction ultimately arose originated with the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations. Under the Standing Rules of the Senate a committee on Government Operations is required to be appointed at the commencement of each Congress, with duties which include that of:

> "(B) studying the operations of Government activities at all levels with a view to determining its *economy* and *efficiency* . . . ." (Emphasis added).[2]

All Standing Committees of the Senate are empowered to act as such and through subcommittees[3] and "may make

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[1] That section provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

[2] RULES AND MANUAL, UNITED STATES SENATE, Rule XXV, pp. 26, 33-34 (1967).

[3] *Id.* at 4 [25.3]; p. 61 [45.1], Legislative Reorganization Act of 1946, ch. 753, 60 Stat. 812. The name of the Committee on Expenditures in the Executive Departments was later changed to the Committee on Government Operations. S. JOUR., 82nd Cong., 2nd Sess. 127 (March 3, 1952).

investigations into any matter within [their] jurisdiction."[4] Also from time to time the Senate by separate resolutions makes money available for certain investigations it considers necessary in furtherance of its legislative responsibilities and in such resolutions directs the committee to undertake the investigations and outlines the general scope of the matter to be investigated. The powers conferred by such resolutions are in addition to the standing powers of the committees and subcommittees.

On March 15, 1968, the Senate adopted Senate Resolution 216 authorizing its Committee on Government Operations "or any subcommittee thereof . . . from February 1, 1968 through January 31, 1969, to make investigations into the *efficiency and economy of operations* of all branches of the Government . . . *waste* . . . and to make a full and complete study and investigation of *riots, violent disturbances of the peace,* vandalism, civil and *criminal disorder,* insurrection, the commission of crimes in connection therewith . . . ."[5] Previously on August 11, 1967,

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[4] Legislative Reorganization Act of 1946, ch. 753, § 134(a), 60 Stat. 832.

[5] The Resolution provided in relevant part:

> *Resolved,* That, in holding hearings, reporting such hearings, and making investigations as authorized by section 134 of the Legislative Reorganization Act of 1946 and in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Government Operations or any subcommittee thereof is authorized from February 1, 1968, through January 31, 1969, to make investigations into the efficiency and economy of operations of all branches of the Government, including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corrupt or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in trans-

the Senate had adopted Senate Resolution 150 authorizing the Government Operations Committee and any duly authorized subcommittee thereof to make a full and complete study and investigation of all other aspects of *crime* and *lawlessness* within the United States which have an impact

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actions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public: *Provided*, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government.

* * * * * *

Sec. 5. The Committee on Government Operations or any duly authorized subcommittee thereof is authorized and directed until January 31, 1969, to make a full and complete study and investigation of riots, violent disturbances of the peace, vandalism, civil and criminal disorder, insurrection, the commission of crimes in connection therewith, the immediate and longstanding causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquility within the United States.

Sec. 6. The Committee on Government Operations or any of its duly authorized subcommittees shall report to the Senate by January 31, 1969, and shall, if

upon or affect the national health, welfare and safety[6] and of other subjects. With the authority above described, the Senate Committee on Government Operations, through its Permanent Subcommittee on Investigations, in the summer of 1968 was in the process of holding hearings on the subjects of riots and civil disorders in the United States.[7] A subpoena directing appellant to appear before the Subcommittee in Washington, D.C., to testify was issued over the signature of the chairman, Senator John L. McClellan,

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deemed appropriate, include, in its report specific legislative recommendations.

S. Res. 216, 90th Cong., 2d Sess., 114 CONG. REC. 6705-06 (1968).

Other sections of the resolution authorize investigation into the field of labor relations, syndicated or organized crime and crime and lawlessness but the indictment only referred to offenses related to the above-quoted provisions of the authorizing resolution.

[6] The relevant part of the Resolution provided:

> "Sec. 4. The Committee on Government Operations or any duly authorized subcommittee thereof is authorized and directed until January 31, 1968, to make a full and complete study and investigation of all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety."

S. Res. 150, 90th Cong., 1st Sess., 113 CONG. REC. 22425 (1967).

Section 5 of this resolution was duplicated by section 5 of S. Res. 216. This indicates that such resolutions were primarily the means of making money available for specified investigations. The resolutions provided money and authority but the authority was supplemental to the standing powers of the committees.

[7] *See* pp. 24-28 *infra* for a discussion of the scope of the inquiry and appellant's relation thereto.

and was served on appellant in Chicago on May 22, 1968.[8] By letter dated July 1, 1968, appellant's counsel acknowledged receipt of the subpoena and submitted the following requests to the Subcommittee:

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[8] The subpoena and return thereon follow:

"United States of America
"Congress of the United States
"To: Jeff Fort, 6046 Dorchester, Chicago, Illinois,
Greeting:

"Pursuant to lawful authority, you are hereby commanded to appear before the Senate Permanent Subcommittee on Investigations of the Government Operations Committee of the Senate of the United States, on June 4, 1968, at 10 o'clock a.m. at their committee room, Room 101, Old Senate Office Building, Washington, D.C., then and there to testify what you may know relative to the subject matters under consideration by said committee.

"Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

"To J. N. Tierney, U.S. Marshal, by Herbert L. Lowe, Deputy, to serve and return.

"Given under my hand, by order of the committee, this 20th day of May, in the year of our Lord one thousand nine hundred and sixty-eight.

"John L. McClellan,
"Chairman, Senate Permanent Subcommittee on Investigations of the Government Operations Committee.

"[Back of Subpoena]

"May 22, 1968.

"I made service of the within subpoena by serving personally . . . the within-named Jeff Fort at 2600 California in the courtroom of Judge Wexler at 11:30 o'clock A.M., on the 22nd day of May, 1968.

"Herbert L. Lowe, Deputy."

114 CONG. REC. 22352 (1968).

Chicago, Ill., July 1, 1968.

Hon. Chairman and Members of the Subcommittee on Investigations of the Committee on Government Operations of the United States Senate:

My client, Mr. Jeff Fort, has been subpenaed to appear before this committee concerning an investigation of the Woodlawn area job training project, Chicago, Ill., funded by the Office of Economic Opportunity. On behalf of Mr. Fort, I hereby request and demand:

1. That each person who has made statements or presented evidence before this subcommittee, either orally or in any written form, including by affidavit, which tends to defame Mr. Fort or otherwise adversely affect his reputation, and any persons who shall hereafter do so, be called to appear personally before this subcommittee and at such time to be confronted personally by Mr. Fort and his undersigned counsel, after reasonable notice to Mr. Fort and said counsel of the time and place of such personal appearance by each such person.

2. That the undersigned counsel for Mr. Fort be permitted to personally orally cross-examine, in a reasonable manner, said persons described in paragraph 1, above.

3. Mr. Fort also requests and demands the right to present additional evidence as to the issues described in paragraph 1, above.

Respectfully submitted.

Marshall Patner
Attorney for Mr. Jeff Fort.

On July 9, 1968, pursuant to the subpoena, appellant and his counsel appeared before the Subcommittee in Room 3302, New Senate Office Building, Washington, D.C., and at that time the chairman ruled on the requests. The chairman ruled that the first request would be granted in the discretion of the Subcommittee upon appellant's request for a given witness. The second request was denied

as being unauthorized under the rules of the Subcommittee.[9] A ruling on the third request was deferred until after the appellant had testified.[10]

The chairman then asked appellant to state his name and appellant did so. However, when appellant was asked to state his address, his counsel interjected that he must instruct his client not to participate further in the proceedings without the right to cross-examination. The chairman again denied this request, and appellant was again asked to state his address; thereupon the appellant and his counsel withdrew from the hearing room. In due course on July 19, 1968 the entire record in the matter was presented to the Senate in the form of a resolution, designated S. Res. 379, and the Senate by a roll call vote of 80 to 19 adopted said resolution directing that the report of its Committee on Government Operations on the appearance on July 9, 1968 of Jeff Fort before the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, together with all the facts in connection therewith, be certified to the United States Attorney for the District of Columbia, to the end that the said Jeff Fort might be proceeded against in the manner and form provided by law.[11] Appellant was there-

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[9] Rule 11 of the Subcommittee's rules provides:

> Interrogation of witnesses at Subcommittee hearings shall be conducted on behalf of the Subcommittee by Members and authorized Subcommittee staff personnel only.

RULES OF PROCEDURE FOR THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS (Comm. Print 1968).

[10] *See Hearings pursuant to S. Res. 216 before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations*, 90th Cong., 2d Sess., Part 12, pp. 2545-2546 (1968).

[11] 114 CONG. REC. 22351-22362 (1968).

after indicted for contempt by a grand jury in the District of Columbia and there brought to trial.

The Government's only witness at trial was Mr. Lavern J. Duffy, an assistant counsel to the Subcommittee, but additional facts were stipulated. Mr. Duffy testified that he had been directed by the Subcommittee to conduct an investigation of riots in three cities, one of which was Chicago. He stated that during the course of his investigation in Chicago, he learned that the Office of Economic Opportunity (OEO) had funded a project in the amount of $927,431 to set up a training program for two "youth gangs" in Chicago. His investigation disclosed that appellant was vice-president of one of these gangs, the Blackstone Rangers, and was on the payroll at a salary of $6,000 a year as a "Center Chief" of the Woodlawn Organization, the entity which had received the OEO grant. Mr. Duffy further testified that he conveyed this information to the Subcommittee, that the Subcommittee issued a subpoena to appellant, and that at the hearing appellant refused to state his address or answer any other questions. The Government also introduced (1) the opening statement of the chairman of the Subcommittee, which outlined the scope of the hearings, (2) the letter which appellant's counsel had written to the Subcommittee,[12] and (3) the subpoena itself. The Government then rested.

The court received certain items of evidence solely for consideration in connection with matters of law for the court and other evidence was admitted for consideration by the jury on factual issues. Other than such evidence as was stipulated to by counsel, appellant put in no evidence. However, during closing argument appellant's counsel attempted to persuade the jury that appellant was not aware of the pertinency of the questions to the purpose of the hearings.

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[12] *See* p. 7, *supra*.

This was his principal argument to the jury and he referred to it by numerous remarks sprinkled throughout his argument. In arguing this point counsel at one place stated:

> "There is no showing that he [Fort] was ever given a copy of the opening statement that Mr. McClellan made."

At another point in his argument counsel remarked:

> "The only thing we did was we wrote a letter, for certain reasons which are not before you, but that doesn't show that we knew all those things. It doesn't show that we had the opening statement and no one has shown that we had the opening statement and no one showed why there was no opportunity, and it hasn't been proved. It's missing."

At the close of counsel's argument the United States Attorney objected to the inference that appellant had no knowledge of the opening statement of the chairman because it had been stipulated by both counsel (and admitted as relevant on those issues involving matters of law which the court had to decide) that:

> "The defendant's counsel purchased daily copy from June 20, 1968 through October 11, 1968. The cover sheet of each daily transcript delivered to the defendant's counsel on the day following each hearing; including the hearings of July 1, July 2, and July 3, correctly referred to the meeting as follows: 'The Subcommittee met at . . . (time and date) in Room 3302, Senate Office Building, pursuant to Senate Resolution 216, agreed to March 15, 1968. . . .'
>
> "Attached hereto as Exhibit A is a printed pamphlet entitled 'Rules of Procedure' bearing the date March 15, 1968. It is agreed that a copy of said pamphlet was in the possession of defendant's counsel in Washington, D.C. on July 1, 1968." (Stipulation B).

On the basis of these stipulations the United States Attorney requested and was allowed by the court to argue

that appellant's counsel had a copy of the chairman's opening statement prior to appellant's appearance in front of the Subcommittee and to urge the inference that appellant therefore knew the pertinency of the questions.

The jury, on December 5, 1968, returned a verdict of guilty on both counts of the indictment,[13] and the court on January 24, 1969, following receipt of a probation report, ordered appellant committed to the custody of the Attorney General for "observation and study" pursuant to the Youth Corrections Act.[14]

On this appeal appellant argues that his conviction must be reversed on the grounds that (1) the contempt statute under which he was convicted is unconstitutional, (2) the Subcommittee erroneously refused to grant appellant certain claimed constitutional rights and committed certain procedural errors, and (3) he was deprived of a fair trial by virtue of the exclusion of certain evidence and by prosecutorial comment on matters not in evidence. We find all of these contentions to be unpersuasive and affirm. We shall consider appellant's arguments in order.

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[13] The first count of the indictment charged appellant with refusing to state his place of residence; the second count charged him with refusing to answer any question to be asked him by the Subcommittee.

[14] The pertinent section provides:

> If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Division shall report to the court its findings.

18 U.S.C. § 5010(e). This observation and study has not yet been carried out. *See* p. 32, *infra*.

I

Appellant first challenges the contempt statute, 2 U.S.C. § 192, as being in violation of the necessary and proper clause of Article I § 8 of the United States Constitution.[15] He argues that the inherent power of Congress to compel testimony by means of civil contempt is the means best calculated to achieve the legitimate congressional end of obtaining information and conversely that criminal contempt, by punishing rather than coercing and by failing to provide a means for the recalcitrant witness to purge himself of his contempt, is not a rational means to achieve the congressional end.

The contempt of Congress statute, which is today 2 U.S.C. § 192, was originally enacted in 1857.[16] Prior to that date, Congress had relied on its inherent powers of civil contempt to compel information. Under this procedure, the witness who refused to testify was committed to the Sergeant-at-Arms of the respective House until he was willing to "purge" himself of his contempt by supplying the requested information,[17] but his confinement could

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[15] U.S. CONST. art. I, § 8:

> The Congress shall have Power . . . to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

[16] Act of January 24, 1857, ch. 19, § 1, 11 Stat. 155.

[17] *See* Watkins v. United States, 354 U.S. 178, 207 n.45 (1957). 3 HIND'S PRECEDENTS § 1669 (1907). *See generally* C. BECK, CONTEMPT OF CONGRESS (1959); Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 HARV. L. REV. 153 (1926); Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 U. PA. L. REV. 691, 780 (1926).

not extend beyond the term of the session,[18] and could always be challenged by habeas corpus.[19]

However, in 1857, Congress determined that more severe sanctions were necessary to compel testimony, and the forerunner of the present contempt statute was passed in order ". . . to inflict a greater punishment than the committee believe the House possesses the power to inflict." *Cong. Globe,* 34th Cong., 3d Sess. 405. That statute was held constitutionally valid by this court in *In re Chapman,* 5 App.D.C. 122 (1895). We there stated:

> That Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions, cannot admit of serious question. Congress is invested with all the legislative power of the Government, and each House also with certain other powers, not legislative in their nature; and it is expressly provided that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested in it. Const. Art. 1, Sec. 8, Par. 18. Under this grant of power, what more natural and appropriate, as a means of executing its powers, and indeed necessary, than a statute providing for the discovery of evidence as the basis of action, and prescribing a punishment for those who contemn the authority of the body, and, by their contumacious conduct, obstruct the lawful exercise of its functions? We have no doubt of the power of Congress in this respect.

Id. at 130-31.

This court's ruling was upheld on appeal by the Supreme Court. *In re Chapman,* 166 U.S. 661 (1897). The Supreme

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[18] Anderson v. Dunn, 19 U.S. (6 Wheat.) 204, 231 (1821).

[19] *See, e.g.,* Kilbourn v. Thompson, 103 U.S. 168, 177 (1881); Potts, *Power of Legislative Bodies to Punish for Contempt, supra* note 17, at 789.

Court agreed that Congress possessed the power to enact the contempt statute, stating that "[i]t was an act *necessary and proper* for carrying into execution the powers vested in Congress and in each House thereof." *Id.* at 671. (Emphasis added). Subsequent cases have upheld the proposition that the contempt statute provides remedies in addition to the remedies available under the inherent power of Congress to punish for contempt. *See Jurney* v. *McCracken,* 294 U.S. 125, 151-52 (1935); *Fields* v. *United States,* 82 U.S.App.D.C. 354, 357, 164 F.2d 97, 100 (1947), *cert. denied,* 332 U.S. 851 (1948). A necessary corollary of these cases is that Congress is not to be limited to the remedy of civil contempt which is always available to it under its inherent powers if it considers such remedy appropriate in a particular case; indeed, it may "coerce" by means of civil contempt, "punish" by means of criminal contempt, and perhaps even both. *See Jurney* v. *McCracken, supra,* 294 U.S. at 151-52; *In re Chapman, supra,* 166 U.S. at 672.

Appellant's argument seeks to avoid the impact of these decisions by attacking the wisdom of the use of criminal contempt proceedings in the circumstances of this case. He suggests that an alternate procedure which would permit the witness to judicially challenge the legality of the inquiry or procedures, and then to purge himself of his contempt by testifying if his contentions were not judicially upheld, would best serve the congressional purpose of obtaining information while relieving the individual witness of the dilemma of "act[ing] at his peril"[20] in which the use of criminal contempt places him.[21] This is

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[20] Chapman v. United States, 5 App.D.C. 122, 136 (1895). *See also* Sinclair v. United States, 279 U.S. 263, 299 (1929).

[21] For a discussion of the problems presented by the present statute, see Marlow, *Fair Procedure in Congressional Investigations: A Proposed Code,* 54 COLUM. L. REV. 839, 882-

not an unreasonable suggestion; in fact, this court some years ago made the same suggestion to Congress. In *Tobin* v. *United States,* 113 U.S.App.D.C. 110, 306 F.2d 270, *cert. denied,* 371 U.S. 902 (1962), the court, anticipating potential constitutional problems if Congress pursued further the inquiry under attack, stated:

> Especially do we say this in view of the unusual nature of the present case, where we are asked to decide essentially civil and jurisdictional issues at the same time that we establish criminal precedent. The conflicting duality inherent in a request of this nature is not particularly conducive to the giving of any satisfactory answer, no matter what the answer should prove to be. Should this controversy be resumed, it is hoped that Congress will first give sympathetic consideration to Judge Youngdahl's eloquent plea:
>
> > "During the House debate on the contempt citation, the Committee inserted in the *Congressional Record* a memorandum purporting to show that declaratory judgment procedures were not an available means for procuring judicial resolution of the basic issues in dispute in this case. Although this question is not before the Court, it does feel that if contempt is, indeed, the only existing method, Congress should consider creating a method of allowing these issues to be settled by declaratory judgment. Even though it may be constitutional to put a man to guessing how a court will rule on difficult questions like those raised in good faith in this suit, what is constitutional is not necessarily most desirable. . . ." 195 F. Supp. at 616-617.

Id. at 116, 306 F.2d at 276.

However, the controlling fact is that Congress did not follow this suggestion, and it is not our province to strike

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85 (1954); Sky, *Judicial Review of Congressional Investigations: Is There An Alternative to Contempt,* 31 GEO. WASH. L. REV. 399 (1962).

down a means reasonably calculated to accomplish a concededly valid congressional end on the grounds that someone may be able to perceive of an arguably better means to accomplish that end. Congress decided in 1857 that it was necessary to add criminal contempt powers to its inherent powers to insure the cooperation of witnesses; this decision provided a rational basis upon which to enact the challenged statute, and that decision is no less valid today. The statute is constitutional.

II

The appellant next argues that the Subcommittee erroneously withheld his constitutional rights to confront and cross-examine those who had allegedly defamed him and to introduce evidence in his own behalf, and that his refusal to testify was thereby justified.

The Constitution is, of course, applicable to any governmental action, including the action of congressional subcommittees. *Watkins* v. *United States,* 354 U.S. 178, 187-88 (1957). But which constitutional rights are applicable depends on the nature and consequences of the governmental action. *Hannah* v. *Larche,* 363 U.S. 420, 442 (1960). Thus certain protections of the Constitution may rightfully be claimed by a witness called to testify before a congressional subcommittee, such as the right not to incriminate himself, the right to be free of unreasonable searches and seizures, and the right not to have his First Amendment freedoms abridged. *Watkins* v. *United States, supra,* 354 U.S. at 187-88. Obviously, the consequences of the denial of these rights are no less severe merely because their denial is brought about by a congressional subcommittee. For example, an unreasonable search and seizure is no less illegal if conducted pursuant to a subpoena of a congressional subcommittee than if conducted by a law enforcement official. The same is true of the

privilege against self-incrimination and First Amendment freedoms. However, when we consider the rights requested here by the appellant, we are dealing with an entirely different matter. The right to present evidence in one's own behalf and to confront and cross examine one's accusers are rights designed to protect the individual's interests when the Government seeks to impose criminal sanctions upon him. But the plain fact is that the congressional investigation with which we are here concerned is an investigative proceeding and not a criminal proceeding, and in such proceeding Congress is not empowered to adjudicate criminal sanctions on the witness.[22]

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[22] We are not persuaded that the Subcommittee had departed from its valid investigatory purpose and was engaged in a legislative trial of appellant as the accused. Actually the Subcommittee was attempting to determine whether moneys previously appropriated by Congress had been properly expended, so that the Congress could amend its produres and conditions in the future to correct such deficiencies as might be uncovered. Such inquiry allows for the broadest investigation and is one of the most valid of legislative purposes. It is true that prior testimony before the Subcommittee had mentioned Fort's name, but he had available to him the procedures of Rule 13 of the Subcommittee Rules, *supra* note 9, which provides:

> Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a Subcommittee Member or Counsel, tends to defame him, or otherwise adversely affect his reputation, may (a) request to appear personally before the Subcommittee to testify in his own behalf, or, in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the Subcommittee for its consideration and action.

Appellant's counsel had a copy of all the Subcommittee Rules. If he had wished to correct any prior testimony

These are the distinguishing features of a congressional investigation that cause such proceedings to be outside the guarantees of the due process clause of the Fifth Amendment and the confrontation right guaranteed in criminal proceedings by the Sixth Amendment. In *Hannah* v. *Larche, supra,* 363 U.S. at 444-45, a case involving an analogous factual situation in a hearing before the Civil Rights Commission in which the petitioners raised objections similar to those raised here by appellant,[23] the

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he could have availed himself of the privileges afforded by Rule 13. He did not do so. Also, with respect to appellant's request that prior witnesses who had defamed him be recalled and be "confronted personally" by appellant and his counsel, the ruling was that same would be granted in the discretion of the Subcommittee upon appellant's request for a given witness. Thus, there was no unfairness present in the proceedings.

[23] *Hannah* involved a challenge to the rules of procedure of the Commission acting under the Civil Rights Act of 1957 in order to investigate complaints that citizens had been discriminatorily deprived of the right to vote on account of their race, color, religion or national origin. The Commission had summoned certain registrars of voters and private citizens of the State of Louisiana to appear at a hearing. These registrars and private citizens challenged the authority of the Commission to hold the hearings and argued in relevant part that the failure of the rules of the Commission to provide an opportunity for their confrontation with and cross-examination of the complaining witnesses violated the Due Process Clause of the Fifth Amendment.

The Court held that these rights were not required by the Due Process Clause in the context of a fact-finding hearing by the Civil Rights Commission. In reaching this conclusion, the Court made the comparison with a legislative investigative committee quoted in the text above. Thus *Hannah* provides analogous support for the proposition that the Constitution does not require the rights contended for in the instant case to be granted a witness in front of a congressional investigating committee.

Court observed:

> "A frequently used type of investigative agency is the legislative committee. The investigative function of such committees is as old as the Republic. The volumes written about legislative investigations have proliferated almost as rapidly as the legislative committees themselves, and the courts have on more than one occasion been confronted with the legal problems presented by such committees. The procedures adopted by legislative investigating committees have varied over the course of years. Yet, the history of these committees clearly demonstrates that only infrequently have witnesses appearing before congressional committees been afforded the procedural rights normally associated with an adjudicative proceeding. *In the vast majority of instances, congressional committees have not given witnesses detailed notice or an opportunity to confront, cross-examine and call other witnesses.*" (Emphasis added). [Footnotes omitted].

The right of cross-examination has in the past been granted to some witnesses in front of congressional investigating committees, specifically during the Army-McCarthy hearings of 1954. Special rules for this unusual proceeding were in fact adopted by the Committee on Government Operations, with a limited right of cross-examination granted to Senator McCarthy (who was implicated and who appeared as a witness at these particular hearings). *See S. Rep. No.* 2507, 83d Cong., 2d Sess. 2-3 (1954). However, the rules adopted for that hearing specifically provided that "[b]ecause of the peculiar nature of the current controversy and the unusual problems created because of the individuals involved, these procedural rules are not in any way to establish a precedent." *Id.* at 3.

Analogous authority may be taken from the procedures followed by the committees of the House of Representatives. There is no provision for cross-examination by a witness in front of a House investigating committee. *See*

3 *Hind's Precedents* § 1768 (1907). However, House committees have on occasion allowed witnesses to cross-examine.[24] A review of the precedents indicates that committees of Congress have allowed cross-examination of witnesses by members or by persons who were not members of Congress in certain special types of proceedings. These include impeachment trials,[25] investigations looking toward impeachment,[26] proceedings involving the

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[24] While it does not constitute any portion of the basis for our decision here, we also note that the Subcommittee, in ruling on appellant's request, did authorize him to submit questions for the Subcommittee to present. Specifically, the chairman stated:

> Your request No. 2, that the undersigned counsel for Mr. Fort be permitted to personally orally cross-examine in a reasonable manner said persons described in paragraph 1 above cannot be granted under the rules of the committee.
>
> You may submit questions for the committee to present, to ask witnesses that may have appeared or may appear to testify with respect to your client.
>
> The committee will weigh those questions and if proper will ask the questions.

Hearings, supra note 10, at 2546. Since appellant's principal objection was directed against witnesses who had *already* testified or submitted affidavits, the permission granted by the Subcommittee was a very substantial one. Appellant could have framed detailed and specific questions on all the defamatory matter he was complaining about.

[25] 3 HIND'S PRECEDENTS § 2168 (1907).

[26] *Id.* § 2403 (a Member of the House not a member of the committee investigating possible grounds to impeach President Johnson was permitted to examine witnesses); *id.* § 2491 (Judge Thurston); *id.* § 2497 (Judge Watrous); *id.* § 2445 (Secretary of War Belknap); 6 CANNON'S PRECEDENTS § 498 (Judge Archbold); *id.* § 526 (Judge Hanford); *id.* § 527 (Judge Speer); *and see* 3 HIND'S PRECEDENTS § 1741 (1907) involving an investigation of Secretary of the Treas-

privileges of a member[27] and when a committee is directed to determine whether there have been violations of the election laws.[28] Such variances in committee procedures from the procedures followed here are based on substantial differences in the nature of the investigations, are permissible under the power of a committee to adopt rules of procedure it considers to be appropriate for the examination of witnesses in a given investigation[29] and do not help appellant.

This is merely an investigation to determine and report the circumstances surrounding the expenditure of moneys appropriated by Congress.

Appellant also contends that his request for the right to cross-examine witnesses was improperly denied by the chairman without submitting the request to a vote of the Subcommittee. At the time of the chairman's ruling, three members of the Subcommittee were in attendance, Senators McClellan, Mundt and Curtis. There is nothing in the Subcommittee rules or any rule of parliamentary

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ury Crawford; and *id.* § 2445 involving an investigation of Secretary of the Treasury Sherman who was permitted to summon witnesses.

[27] 3 HIND'S PRECEDENTS § 1644 (Members who had been concerned in a duel which resulted in the death of a Member were permitted to attend and cross examine witnesses during the investigation); *id.* § 1841 (permitted further interrogations after investigating committee received written statements for Senate and House Members and others); *id.* § 1848 (investigation of assault on Senator Sumner; House Committee informed House Member he could read testimony, testify himself and summon witnesses).

[28] Contestees have been permitted to cross examine witnesses since the first election contest in 1789, 1 HIND'S PRECEDENTS §§ 420, 717 (1907).

[29] *See* 3 HIND'S PRECEDENTS §§ 1841, 1842 (1907); 6 CANNON'S PRECEDENTS § 377 (1936).

procedure that requires the matter to be submitted to a formal vote of the Subcommittee.

The chairman presides at sessions of the committee [30] and, under the well established rules of parliamentary procedure, the presiding officer decides procedural questions by ruling thereon.[31] After such ruling if any member then objects to the ruling, he voices it and the chairman thereupon states "Shall the question be put?" and the members present vote thereon. This is the proper method and in the absence of objection the ruling stands by unanimous consent.[32] At the time of appellant's appearance the other

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[30] *Jefferson's Manual* § XI, in H.R. Doc. No. 529, 89th Cong., 2d Sess. § 317 (1967).

[31] The presiding officer makes "decisions on procedural matters that arise." W. Hoogestraat, Modern Parliamentary Practice 12 (1966); H. Davidson, Handbook on Parliamentary Procedure § 402 (2d ed. 1968).

[32] Generally the procedure in committees follows that applicable to the principal body. 8 CANNON'S PRECEDENTS §§ 2213, 2215 (1936). In the U.S. House of Representatives, its rules so provide. *Rules of the House of Representatives*, Rule 76(a), in H.R. Doc. No. 529, *supra* note 30, § 735. The rules applicable in the U.S. House of Representatives and the Senate are indicative of acceptable parliamentary practice. Procedural questions arising in the House of Representatives are decided by the Speaker by his ruling thereon, *Rules of the House of Representatives*, Rule 1, cl. 4, in H.R. Doc. No. 529, *supra*, § 624, and those arising in the Committee of the Whole are decided by the chairman. 5 HIND'S PRECEDENTS § 6928 (1907) (*see* 4 HIND'S PRECEDENTS § 4569 (1907)). Rulings by the speaker are "subject to an appeal by any member" and may thus be reexamined and reversed by the House. *Rules of the House of Representatives*, Rule 1, cl. 4, in H.R. Doc. No. 529, *supra*, §§ 624, 627-28. *Jefferson's Manual* makes the same point in that "[i]n Parliament, all decisions of the Speaker may be controlled by the House. 3 Grey, 319." *Jefferson's Manual* § 17, in H.R. Doc. No. 529, *supra*, § 379. If, during an investigation, a com-

two Senators, who were present and participating, prior to their Senate service had previously served for many years as active members of the House of Representatives[33] and could not fail to be thoroughly familiar with the proper procedure to be followed in such cases. Had they any objection to the chairman's ruling, they would have asserted it and failing to do so, under the well established principles of parliamentary procedure, they are deemed to have assented to it. Moreover, the record of the hearing makes it clear that Senators Mundt and Curtis by their remarks at the time indicated their support of the chairman's ruling on appellant's request to cross examine witnesses.[34] We therefore conclude that appellant's conten-

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mittee member objects to a question, the committee decides whether or not the question shall be put, 3 HIND'S PRECEDENTS § 1775 (1907), but it takes an objection by a committee member to trigger the procedure of submitting the appeal to the full committee. Thus it is not every ruling by the chairman that is subjected to a vote. The practice in this respect follows general parliamentary practice in Congress, as the CONGRESSIONAL RECORD abundantly indicates, whereby so much is accomplished by unanimous consent. If every ruling required a vote of the entire committee present, hearings could be greatly delayed.

[33] *See* WHO'S WHO IN AMERICA (36th ed. 1970): Carl Thomas Curtis, Karl Earl Mundt. Both Senators have served in the House of Representatives or the Senate continuously since 1939.

[34] *Hearings, supra* note 10, at 2546-2554. Additionally, when the chairman ruled on the motion by counsel for appellant to strike all prior testimony concerning Fort, because of a claimed denial to him of a right to confront or cross examine certain witnesses, his remarks indicated that he recognized his ruling could be upset by the Committee. At that time the chairman remarked, "The ruling of the Chair will be *if I am sustained*, that nothing we have received in the record thus far will be stricken from the record." *Hearings, supra*, at 2546. This remark was a reminder to the other Senators, had they needed it, that his

tions that he had the right to cross examine those who had allegedly defamed him, and to present evidence in his own behalf, are without merit to the extent that he asserted he possessed those rights in excess of the participation that had been allowed him by the rulings of the chairman.

Appellant also contends that the Subcommittee lacked authority to conduct the inquiry in question and that the questions to be asked appellant were not relevant to the inquiry, citing *Watkins* v. *United States, supra.* This contention must also fall. The enabling resolution authorized the Subcommittee to investigate "the efficiency and economy of operations of all branches of the Government," "syndicated or organized crime," "all other aspects of crime and lawlessness within the United States," and "riots, violent disturbances of the peace, vandalism, civil and criminal disorders."[35] The Chairman, in his statement opening the hearings, outlined the purpose and scope of the hearings as follows:

> The CHAIRMAN. The Chair will make a brief opening statement.
>
> Today the subcommittee begins an inquiry into a grant of Federal funds totaling $927,341 made on June 2, 1967, by the Office of Economic Opportunity to a Chicago civic organization for a program that was supposed to provide education and employment opportunities for members of two of that city's street gangs, the Blackstone Rangers and the East Side Disciples.
>
> The grant was purportedly made to enable approximately 800 members of the two gangs to acquire

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ruling could be reversed by them, if they so desired. All other rulings by the chairman were subject to the same right in the Members to upset the ruling and in the absence of any indication by the other Members that they contested them, the rulings stand by unanimous consent.

[35] See note 5 *supra.*

basic educational skills in reading, writing, and arithmetic. There were also provisions for referring them to prospective employers after their schooling had been completed.

A program of this kind may sound worthy and laudable, particularly when its alleged objectives are to give members of a gang of youths an opportunity to choose an alternative to the lawlessness and violence which usually characterize the activities of city street gangs.

In the course of our inquiry into riots in Chicago, however, the subcommittee received a number of disturbing reports about serious improprieties related to this federally financed youth manpower program. It appears that supervision and control of its operations have been extremely inadequate, although we understand that from the beginning OEO designated this program as a "high risk" type of activity. The subcommittee has been informed that the running of the program was actually turned over to the gang leaders and that the civic organization which received the grant from OEO exercised little or no authority over their activities. We are advised that the law enforcement officials of Chicago, who have been trying diligently to control and disband street gangs on Chicago's South Side strongly opposed the disbursement of Federal funds for this project because they believed that the primary result of such payments would be to strengthen and consolidate the gangs.

Information the subcommittee has received indicates that the funds expended for the program's specific goals may have been almost completely wasted. It has been reported that the Federal grant of almost $1 million, disbursed through the community group called the Woodlawn Organization, actually has been used as Chicago officials charged, to bolster and perpetuate the traditional structure of the two gangs and to furnish financial support to gang leaders and their followers rather than to educate gang members or provide them with jobs.

The subcommittee expects to hear testimony about

the criminal records of the gang leaders and members who were employed as supervisors and teachers in the program's education centers. It has been reported that a very large percentage of these employees have been arrested and charged with serious crimes such as murder, rape, and strong-arm robbery since the grant was approved by OEO. One of the principal leaders of the Blackstone Rangers, Eugene Hairston, was convicted on May 29 of this year for soliciting a group of teenage gang members to murder three men. This crime occurred subsequent to the OEO grant. The evidence in the trial revealed that the young Blackstone Rangers were given $1 each and portions of cold meat, cheese, and orange juice as payment for committing the crime. At the time of the killing in June of 1967 Hairston was assistant project director of the OEO-funded program.

During these hearings, we will hear testimony from city officials of Chicago, from representatives of the Office of Economic Opportunity, and from members of the Woodlawn Organization.

We have called witnesses who are knowledgeable about the structure and operations of the gangs, particularly a young man who formerly held one of the top positions of leadership in the Blackstone Rangers.

(At this point Senator Javits entered the hearing room.)

The CHAIRMAN. The subcommittee will seek to determine the validity of an allegation that the Office of Economic Opportunity, in negotiating the conditions of the grant, in fact, made a deal with the leadership of the gangs to permit them to have firm control of the youth program and the sum of almost $1 million which financed it, in return for their promise to end the bloody warfare between the gangs.

We will attempt to ascertain whether any benefits were derived from this arrangement or whether the Chicago experiment resulted mainly in strengthening the gangs and actually increasing unlawful and criminal activities in the areas under their control. We want to know whether Federal funds were used as

a payoff to the gangs to buy peace on the streets of Chicago's South Side.

The subcommittee is conducting this investigation pursuant to the authority granted in Senate Resolution 216,[36] 90th Congress, second session. In the normal functioning of the subcommittee, we have the duty and responsibility to inquire into waste and inefficiency in Government operations, organized crime, and improprieties in labor-management affairs. Additionally, since August 12, 1967, the Senate has authorized and directed the subcommittee to inquire into matters relating to urban riots and criminal activities and civil disorders.

The hearings which start today will be concerned in part with rioting and civil disorders and disturbances in the city of Chicago, and certain of the testimony will relate to matters of organized crime. *However, the Chair wishes to state that this investigation into the use of Federal funds for the benefit of two street gangs in Chicago is also being conducted under the authority given in Senate Resolution 216,*[37] *March 15, 1968, to "make investigations into the efficiency and economy of operations of all branches of the Government, including the possible existence of fraud, misfeasance, collusion, mismanagement, incompetence, corrupt or unethical practices, waste, extravagance, conflict of interest, and the improper expenditure of Government funds."* (Emphasis added.)[38]

Appellant Jeff Fort was vice president of the Blackstone Rangers and a "Center Chief" of the OEO-sponsored Woodlawn Project at a salary of $6,000 a year.[39]

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[36] A typographical error in the original daily copy of the hearing transcript received by counsel for appellant from the court reporter stated that the authorizing resolution was "212" instead of "216." *See* pp. 29-30, *infra.*

[37] *Id.*

[38] *Hearings, supra* note 10, Part 9, at 1805-07.

[39] *Id.*, Part 12, at 2547.

Immediately after appellant withdrew from the hearing, the members of the Subcommittee read into the record certain questions they were prepared to ask him concerning his authority and duties as a Center Chief and concerning his knowledge of any illegal activities undertaken by the Blackstone Rangers during the period of the grant.[40] We consider these questions were clearly pertinent to the inquiry[41] and that the inquiry itself was well within the authority of Congress to undertake. *See Barenblatt* v. *United States*, 360 U.S. 109 (1959). Moreover, we hold that the question directed to appellant, "Where do you live, Jeff?" was pertinent to the subject matter of the investigation in that its answer would serve to further identify appellant. Positively establishing the identity of the witness as the Jeff Fort who lived in South Chicago, who was a member of the Blackstone Rangers and who was on the payroll as a Center Chief of the Woodlawn Project funded by the OEO was essential to the Subcommittee's investigation if his testimony was to have any pertinency to the subject matter of the investigation. The identity of a witness is an important fact in almost every investigation and so it was with Jeff Fort in this one so we conclude that the questions asked him were relevant to the investigation.

No question of pertinency was raised with respect to the conviction on the second count which charged that appellant "deliberately and intentionally . . . declined and refused to answer any questions." It is hard to imagine any conduct that would be more contemptuous of the Congress than refusing for no justifiable reason to answer *any* questions. Under the circumstances here pres-

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[40] *Id.*, Part 12, at 2550-54.

[41] Whether Fort could refuse to answer some questions on Fifth Amendment grounds would raise other problems.

ent we find such conduct to be a clear violation of the applicable contempt statute.

III

Appellant next argues that he was denied a fair trial by virtue of the exclusion of certain evidence and by prosecutorial comment on certain matters not in evidence. Appellant sought to introduce the opening statement of the Subcommittee as transcribed in the daily copy that he had purchased on the grounds that it contained a typographical error and therefore did not give him adequate notice of the proceedings. The typographical error complained of was the insertion of the incorrect authorizing resolution—Senate Resolution 212 rather than Senate Resolution 216. However, appellant's counsel had a complete copy of the opening statement of the chairman of the Subcommittee outlining the purpose of the hearing [42] and that statement was complete and gave adequate notice to all who could read as to the subject of the investigation. Such fact alone is sufficient to refute any claim of lack of adequate notice of committee purpose. Thus, the content of the chairman's opening statement was sufficient to place counsel and his client upon notice of the *particular purpose* (OEO Woodlawn Project) of the investigation.

Moreover, it was stipulated that appellant's counsel on July 1, 1968, eight days before the hearing, had in his possession a copy of the Rules of Procedure of the Senate Subcommittee which on the opening page contained a complete copy of Senate Resolution 216 and in the remaining pages set forth other applicable Senate Resolutions and the Rules of Procedure for the Investigations Subcommittee as adopted on January 22, 1968. This

[42] *See* text, *supra*, pages 16-17.

refutes any claim that appellant, through his counsel, did not have notice that the Subcommittee was authorized to act under the powers conferred by Senate Resolution 216. It was also stipulated that appellant's counsel purchased daily copies of the hearings from June 20, 1968 through October 11, 1968. The cover sheet on each daily transcript so delivered *correctly* referred to the authority for the hearing as being Senate Resolution 216[43] and not "212."

It is also significant that the single typographical error of which appellant complains was not in any document served upon him by the Subcommittee but rather was contained in an advance copy of the hearings he obtained himself. As all know who deal with transcribed testimony, errors frequently occur in daily copies. That some error had been made in referring to Senate Resolution 212 instead of 216 would have been apparent to any person who checked S. Res. 212 because that resolution referred to investigations of "national security and international operations"[44] which objects were remote from the purpose announced by the Subcommittee to investigate the Woodlawn expenditures of the OEO grant. The first paragraph of the letter dated July 1, 1968 of appellant's counsel to the Subcommittee also indicated that he knew the Subcommittee was investigating the "Woodlawn area job training project, Chicago, Illinois, funded by the Office of Economic Opportunity" and was familiar with the prior testimony and affidavits received by the Subcommittee with respect to Jeff Fort.

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[43] According to the stipulation, the cover sheet of each daily transcript stated:

> The Subcommittee met at . . . (time and date) in Room 3302, Senate Office Building, pursuant to Senate Resolution 216, agreed to March 15, 1968.

[44] 114 CONG. REC. 6707 (1968).

Finally, the chairman repeated the purpose of the investigation when appellant and his counsel were before the Subcommittee on July 9, 1968.[45] There is enough in all this to show that appellant personally and through his counsel had adequate notice and that he was not misled by the typographical error. *See Sinclair* v. *United States*, 279 U.S. 263, 296 (1929). Such error was legally insignificant.

Appellant also argues that the prosecutor in closing argument referred to certain documents not in evidence. However, the record makes it clear that the first challenged document—the opening statement of the chairman—was in fact admitted into evidence and read to the jury. (Tr. 181-186). This was also contained in the printed volumes of the Subcommittee hearings which were admitted into evidence by stipulation of the parties. (Tr. 129). The second challenged document was a stipulation of the parties to the effect that appellant's counsel had purchased a daily copy of the hearings from June 20 to October 11, 1968. (Tr. 271). This fact had been stipulated to by the parties for the court's consideration and at the time it was admitted appellant's counsel stated "It may be at a subsequent point we may ask it be submitted to the jury . . . ." (Tr. 130). The court permitted the prosecutor to refer to this stipulation in his argument to the jury only because it found that appellant's counsel had attempted to convey to the jury in closing argument the impression that his client was without any means of knowledge of the opening statement of the chairman. The court held that appellant's counsel by his argument had "opened the door up before the jury." We agree. His action was equivalent to admitting a fact stipulated for one purpose to be used for another purpose. Appellant's counsel admitted the correctness of the fact. (Tr. 273). Under

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[45] *Hearings, supra* note 10, at 2548.

such circumstances we find the court's ruling to be within its allowable discretion as to the use of evidence.

Appellant finally challenges the action of the trial court, following the conviction of Fort, in remanding him to the custody of the Attorney General pursuant to 18 U.S.C. § 5010(e)[46] of the Youth Corrections Act [47] for examination to determine his suitability for commitment pursuant to that Act.[48] Appellant has not yet been sentenced. However, shortly after his conviction and remand for examination this court held that such order of commitment was a sufficiently final order so that an appeal could be taken from the underlying conviction. *United States* v. *Fort,* 133 U.S.App.D.C. 155, 409 F.2d 441 (1969). Under a subsequent order of this court, the appellant was released on bail pending appeal. Consequently the court's order that appellant be examined to determine his suitability for commitment under the Youth Corrections Act has not been carried out and we, of course, cannot predict the results of that observation nor what action the trial court will take based on the results of the observa-

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[46] *See* note 14 *supra.*

[47] *See* 18 U.S.C. § 5005 *et seq.* (1964).

[48] In so doing the court stated:

> I have analyzed the probation report and am of the opinion that this Court should commit the defendant under Section 5010(e) for an investigation which will result in determining whether he will derive benefit from commitment under the Federal Youth Corrections Act.
>
> I would like to conclude by quoting a portion of the probation report which reads as follows:
>
> "Punishment by confinement alone would probably be completely negative. Planning for long term rehabilitation is indicated and can best be commenced in an institutional seting where additional diagnostic and intensive counselling services can be attempted."

tion. The court may or may not sentence appellant under the Youth Corrections Act, and because of this uncertainty the contention is made that raising the question now is premature and for that reason we should not now attempt to decide the issue. However, appellant has been convicted; and the court has ordered him committed to the custody of the Attorney General under 18 U.S.C. § 5010(e)[49] for examination; and such order in his case is a preliminary requirement to his eventual sentencing under the Act; and he challenges the application of section 5010(e) to him. He also asserts that he cannot finally be sentenced under the Act but that additional question is not strictly before us. However, in passing on the proper application of section 5010(e), we might also, as a practical matter, decide the ultimate question. That we might do so should not deter us from answering the question that is before us involving the remand to the custody of the Attorney General for upwards of sixty days for observation and study to determine whether appellant may derive benefit from treatment under section 5010(b) or (c). Such question is to be answered by an interpretation of the Youth Corrections Act.

The Act was adopted by Congress in 1950 in order "To provide a system for the treatment and rehabilitation of youth offenders, to improve the administration of criminal justice, and for other purposes." (64 Stat. 1085). The Act provides that a "'youth offender' means a person under the age of twenty-two years at the time of conviction."[50] And a "'committed youth offender' is one committed for treatment thereunder to the custody of the Attorney General pursuant to section 5010(b) and 5010(c) of [said] chapter."[51] The two latter sections provide:

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[49] *See* note 14 *supra.*

[50] 18 U.S.C. § 5006(e), 64 Stat. 1086.

[51] *Id.* § 5006(f).

> *"If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection,* the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Division as provided in section 5017(c) of this chapter." (Emphasis added).

18 U.S.C. § 5010(b), 64 Stat. 1087.

> "If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Division as provided in section 5017(d) of this chapter."

18 U.S.C. § 5010(c), 64 Stat. 1087.

It is thus clear that secion 5010(b) states the basic requirements upon which coverage of the Act is determined. They are twofold. First, that the convicted person be a youth offender, *i.e.,* under twenty-two at the time of conviction, and, secondly, that the offense of which he is convicted be *"punishable by imprisonment* under applicable provisions of law other than this subsection." (Emphasis added). Appellant contends that it was not the intent of Congress to apply the Act to persons convicted of misdemeanors; or to persons convicted of contempt because the very nature of a conviction for contempt was not one that required rehabilitation.

However, the standard prescribed by Congress as the basis for the application of the Act was not concerned

with the nature of the offense but rather with the nature of the punishment possible under the act he was convicted of violating, *i.e.*, whether it was *punishable by imprisonment.* We thus decide that a person convicted of contempt of Congress under a statute authorizing imprisonment for a year or less (a misdemeanor) may be committed to the custody of the Attorney General for observation and study under 18 U.S.C. § 5010(e). That a youth offender may eventually be sentenced under the Youth Corrections Act for an indeterminate period of treatment up to four years, plus possible supervision for an additional two years, does not alter the holding. All "youth offenders" are subject to the same treatment. If they respond properly they may be released sooner (§ 5017) and upon the unconditional discharge by the Youth Corrections Division of a committed youth offender before the expiration of the maximum sentence imposed upon him the conviction is automatically set aside.[52]

Appellant also contends that the Youth Corrections Act should not be automatically applied just because a defendant is within the prescribed age limits and that appellant was entitled to an evidentiary hearing on whether

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[52] 18 U.S.C. § 5021(a) and (b), 64 Stat. 1089, provides:

(a) Upon the unconditional discharge by the division of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the division shall issue to the youth offender a certificate to that effect.

(b) Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect.

"commitment prior to sentencing is contested." We see no evidence here that the Act was automatically applied but we do note that appellant on the face of the record apparently satisfied all the conditions precedent to qualifying initially for consideration as to whether he was eligible under the Youth Corrections Act.[53] Certainly every judge who sentences a youth offender should seriously consider whether the offender is eligible for treatment under the Youth Corrections Act. In most cases it is the preferred method of attempting to rehabilitate youth offenders. We find nothing wrong with the way the trial judge handled the commitment of appellant for examination.

With reference to the claim that appellant was entitled to an evidentiary hearing on such commitment, it may be now that we have ruled out some of the issues that appellant considered were involved, that his idea as to the necessity or magnitude of this hearing may somewhat dissipate. Of course, a convicted person is always entitled to a hearing if he makes a substantial claim in good faith that he is not a "convicted youth offender." However, the appellant here did have a hearing on precisely that point when he was committed. After ordering his commitment under section 5010(e) the trial judge inquired, "Do you have anything to say, counsel?" Counsel then proceeded to question whether section 5010(e) was applicable. He pointed to the offender's age as being over twenty-one, that the offense was a misdemeanor[54] and

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[53] The Youth Corrections Act defines "youth offender" to mean "a person under the age of 22 years at the time of conviction," 18 U.S.C. § 5006(e), and "conviction" to mean "the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere," 18 U.S.C. § 5006(h). The record indicates that Fort satisfied these requirements.

[54] Carter v. United States, 113 U.S.App.D.C. 123, 125, 306 F.2d 283, 285 (1962) holds that sentences may be imposed

to the non-violent nature of the crime of contempt for which he was convicted. The United States Attorney then responded and finally the court informed counsel and appellant of certain matters reported in the probation report, namely: that following his conviction of contempt appellant was rearrested in Chicago on an old warrant and in effecting the arrest, a search of his premises disclosed an unregistered pistol and he was charged accordingly. The search also disclosed three 12-gauge shotguns, sixteen shotgun shells, sixteen .45 caliber bullets, one hundred thirty-four .30 caliber bullets, forty 9MM Luger bullets, and two pair of brass knuckles. Following this argument and disclosure the court rejected the arguments of appellant's counsel as to the proper interpretation of the statute and ordered appellant committed. We find nothing to criticize in the handling of this phase of the matter by the trial court.

We accordingly affirm the conviction and remand the case to the trial court to carry out the commitment under section 5010(e) and for eventual sentencing.

Affirmed.

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under the Youth Corrections Act in misdemeanor cases. By its precise terms the Youth Corrections Act authorizes commitment thereunder if "the offense is punishable by imprisonment under applicable provisions of law other than" the Youth Corrections Act.

APPENDIX B

STATUTE INVOLVED

Title 2, United States Code, § 192, provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

RESOLUTIONS INVOLVED

Senate Resolution 53, 90th Congress, 1st Session (1967), provides in pertinent part:

> *Resolved*, That, in holding hearings, reporting such hearings, and making investigations as authorized by section 134 of the Legislative Reorganization Act of 1946 and in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Government Operations or any subcommittee thereof is authorized from February 1, 1967, through January 31, 1968, to make investigations into the efficiency and economy of operations of all branches of the Government, including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corrupt or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities

of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public: *Provided*, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government.

* * * *

SEC. 3. The Committee on Government Operations or any duly authorized subcommittee thereof is further authorized and directed from February 1, 1967, to January 31, 1968, inclusive, to make a full and complete study and investigation of syndicated or organized crime which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the person, firms, or corporations, or other entities by whom such utilization is being made, what facilities, devices, methods, techniques, and technicalities are being used or employed, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violation of the law of the United States or the laws of any State and, further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activities have infiltrated into lawful business enterprise; and to study the ade-

quacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against the occurrences of such practices or activities. Nothing contained in this resolution shall affect or impair the exercise by the Committee on the Judiciary or by the Committee on Commerce of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946.

SEC. 4. The Committee on Government Operations or any of its duly authorized subcommittees shall report to the Senate by January 31, 1968, and shall, if deemed appropriate, include in its report specific legislative recommendations.

SEC. 5. (a) For the purposes of this resolution, the Committee on Government Operations or any of its duly authorized subcommittees, from February 1, 1967, to January 31, 1968, inclusive, is authorized, as it deems necessary and appropriate, to (1) make such expenditures from the contingent fund of the Senate; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) administer such oaths; (5) take such testimony, either orally or by sworn statement; (6) employ on a temporary basis such technical, clerical, and other assistants and consultants; and (7) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and, further, with the consent of other committees or subcommittees to work in conjunction with and utilize their staffs, as it shall be deemed necessary and appropriate in the judgment of the chairman of the committee or subcommittee . . . .

(b) For the purpose of this resolution the committee, or any duly authorized subcommittee thereof, or its chairman, or any other member of the com-

mittee or subcommittee designated by the chairman, from February 1, 1967, to January 31, 1968, inclusive, is authorized, in its or his or their discretion, as may be deemed advisable, to require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents.

* * * *

Senate Resolution 150, 90th Congress, 1st Session (1967), provides in pertinent part:

Resolved, That (a) Senate Resolution 53, Ninetieth Congress, first session, agreed to February 17, 1967, is amended by inserting therein, immediately after section 3 thereof, the following new sections:

"SEC. 4. The Committee on Government Operations or any duly authorized subcommittee thereof is authorized and directed until January 31, 1968, to make a full and complete study and investigation of all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety.

"SEC. 5. The Committee on Government Operations or any duly authorized subcommittee thereof is authorized and directed until January 31, 1968, to make a full and complete study and investigation of riots, violent disturbances of the peace, vandalism, civil and criminal disorder, insurrection, the commission of crimes in connection therewith, the immediate and longstanding causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquillity within the United States.

"SEC. 6. The Committee on Government Operations or any of its duly authorized subcommittees shall make an interim report to the Senate on the investigations authorized and directed by sections 4 and 5 hereof no later than October 2, 1967.

"SEC. 7. Sections 4, 5, and 6 of Senate Resolution 53, Ninetieth Congress, first session, agreed to February 17, 1967, are hereby redesignated as sections 8, 9, and 10, respectively."

* * * *

Senate Resolution 216, 90th Congress, 2d Session (1968), provides in pertinent part:

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by section 134 of the Legislative Reorganization Act of 946 and in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Government Operations or any subcommittee thereof is authorized from February 1, 1968, through January 31, 1969, to make investigations into the efficiency and economy of operations of all branches of the Government, including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corrupt or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public: *Provided*, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of the particular branch of the Government under inquiry, and may extend to the records and activities of persons, corporations, or other entities dealing with or affecting that particular branch of the Government.

* * * *

SEC. 3. The Committee on Government Operations or any duly authorized subcommittee thereof is further authorized and directed from February 1, 1968, to January 31, 1969, inclusive, to make a full and complete study and investigation of syndicated or organized crime which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, what facilities, devices, methods, techniques, and technicalities are being used or employed, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violation of the law of the United States or the laws of any State and, further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activities have infiltrated into lawful business enterprise; and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against the occurrences of such practices or activities. Nothing contained in this resolution shall affect or impair the exercise by the Committee on the Judiciary or by the Committee on Commerce of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946.

SEC. 4. The Committee on Government Operations or any duly authorized subcommittee thereof is authorized and directed until January 31, 1969, to make a full and complete study and investigation of all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety.

SEC. 5. The Committee on Government Operations or any duly authorized subcommittee thereof is authorized and directed until January 31, 1969, to make a full and complete study and investigation of riots, violent disturbances of the peace, vandalism, civil and criminal disorder, insurrection, the commission of crimes in connection therewith, the immediate and longstanding causes, the extent and effects of such occurrences and crimes, and measures necessary for their immediate and long-range prevention and for the preservation of law and order and to insure domestic tranquility within the United States.

SEC. 6. The Committee on Government Operations or any of its duly authorized subcommittees shall report to the Senate by January 31, 1969, and shall, if deemed appropriate, include, in its report specific legislative recommendations.

SEC. 7. (a) For the purposes of this resolution, the Committee on Government Operations or any of its duly authorized subcommittees, from February 1, 1968, to January 31, 1969, inclusive, is authorized, as it deems necessary and appropriate, to (1) make such expenditures from the contingent fund of the Senate; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) administer such oaths; (5) take such testimony, either orally or by sworn statement; (6) employ on a temporary basis such technical, clerical, and other assistants and consultants; and (7) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and, further, with the consent of other committees or subcommittees to work in conjunction with and utilize their staffs, as it shall be deemed necessary and appropriate in the judgment of the chairman of the committee or subcommittee . . . .

(b) For the purpose of this resolution the committee, or any duly authorized subcommittee thereof, or its chairman, or any other member of the com-

mittee or subcommittee designated by the chairman, from February 1, 1968, to January 31, 1969, inclusive, is authorized, in its or his or their discretion, as may be deemed advisable, to require by subpena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents.

* * * *

RULES INVOLVED

The Rules of Procedure for the Senate Permanent Subcommittee on Investigations, in effect on July 9, 1968, provide in pertinent part:

1. No major investigation shall be initiated without approval of either a majority of the Subcommittee or a majority of the full Committee on Government Operations. However, preliminary inquiries may be initiated by the Subcommittee staff with the approval of the Chairman of the Subcommittee.

2. Subpenas for attendance of witnesses and the production of memoranda, documents, and records shall be issued by the Subcommittee Chairman or by any other Member of the Subcommittee designated by him.

* * * *

5. For public or executive sessions, any two Members of the Subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter. With the permission of the Chairman and the ranking minority Member, one Member of the Subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter, in public or executive sessions, effective until January 31, 1969.

6. All witnesses at public or executive hearings who testify to matters of fact shall be sworn.

7. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public

or executive hearing, and to advise such witness while he is testifying, of his legal rights. . . . This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for contumacy or disorderly conduct; nor shall this rule be construed as authorizing counsel to coach the witness, answer for the witness, or put words in the witness' mouth. The failure of any witness to secure counsel shall not excuse such witness from attendance in response to subpena.

8. Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the counsel or Chairman of the Subcommittee 24 hours in advance of the hearings at which the statement is to be presented. The Subcommittee shall determine whether such statement may be read or placed in the record of the hearing.

9. A witness may request, on grounds of distraction, harassment, or physical discomfort, that during his testimony, television, motion picture, and other cameras and lights shall not be directed at him, such request to be ruled on by the Subcommittee Members present at the hearing.

10. An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his own testimony whether in public or executive session shall be made available for inspection by witness or his counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness at his expense if he so requests.

11. Interrogation of witnesses at Subcommittee hearings shall be conducted on behalf of the Subcommittee by Members and authorized Subcommittee staff personnel only.

12. Any person who is the subject of an investigation in public hearings may submit to the Chairman of the Subcommittee questions in writing for

the cross-examination of other witnesses called by the Subcommittee. With the consent of a majority of the Members of the Subcommittee present and voting, these questions shall be put to the witness by the Chairman, by a Member of the Subcommittee, or by Counsel of the Subcommittee.

13. Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a Subcommittee Member or counsel, tends to defame him or otherwise adversely affect his reputation, may (*a*) request to appear personally before the Subcommittee to testify in his own behalf, or, in the alternative, (*b*) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the Subcommittee for its consideration and action.

14. All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the Subcommittee.

* * * *

CONSTITUTIONAL PROVISIONS.

Article I, Section 8, Clause 18. Enactment of laws for execution of governmental powers

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Amendment V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation For Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI—Jury Trials For Crimes, And Procedural Rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.